status of the customer in whose favor and for the sake of whose patronage such an exception is made.

The principal case further presents the difficult problem as to the extent of the scope of the status of a business guest. In other words, the question raised is as to how far the legal status of a business guest extends as a protection to such property as the guest may bring upon the premises. It would seem from the statement[5] of Bray, J., that this legal status extends to cover such incidents of personalty as are invited into the business establishment. In denying recovery for injuries to the plaintiff's dog, he says, "Then did the defendants invite the dog into their shop? There is no finding to that effect and it cannot be sufficient if they merely permitted it to come in. In my opinion . . . both claims fail." Now it is entirely clear that whether or not a given article is "invited" to be brought into an establishment or is merely "permitted" to be carried in by the owner must of necessity depend upon the character of the property in question and the nature of the establishment. For instance there can be no doubt that a business guest is always invited to bring into a store or shop such ordinary incidents of personal property as a hat or a watch, or an umbrella or a cane, and consequently such property falls within the protection accorded to the owner by law. It is equally clear that an individual who goes shopping with a large dog or who enters an ordinary business establishment carrying explosives is, even though there is no rule against bringing them in, nevertheless merely permitted to do so. Objectionable property of such a nature is clearly not invited in by the business agencies and consequently such property is not guarded by the status of the owner.

It is believed that this question just discussed has not before been directly presented and it is a matter of considerable difficulty to formulate the correct rule of law which should govern the matter. It is, however, tentatively submitted that the legal status of a business guest should be regarded as including within its protective scope such ordinary incidents of personalty as the average individual would ordinarily take into the kind of establishment in question while shopping, and that the jury should be left to determine whether or not the property in question was of this character.

P. C. M., Jr.

TRUSTS—IS THE PROPAGATION OF CHRISTIAN SCIENCE A CHARITY?—Just how far a court will go to uphold a trust established for charitable purposes is most forcibly illustrated in a recent Massachusetts decision,[1] where a bequest in the will of the late Mrs. Eddy was attacked by her heirs-at-law. The controversy centered around the interpretation of a local statute[2] which prohibited gifts for the benefit of any one church where the amount

[5] On p. 932, L. J. R. (K. B.).

[1] Chase v. Dickey, 13 N. E. Rep. 410 (Mass., 1912).

[2] R. L. c. 37, § 9.

involved exceeded two thousand dollars. In this case the devise, far in excess of two thousand dollars, was to the "Mother Church" in Boston in trust for the purposes of keeping in repair certain of the church buildings, while the balance of the income and as much of the principal as might be deemed wise was to be devoted to the promotion and extension of Christian Sicence as taught by the testatrix herself.

Though there were many points raised in the dispute, for the purposes of this discussion it is sufficient to dwell only upon the manner in which the charity was supported in the face of the existing statute.

It may be generally said that the distinction between public and private trusts lies in the fact that in the former instance the benefit accrues to an indefinite number of persons at large,[3] while in the latter case, certain definite, defined, specified objects are designated as the beneficiaries.[4] The fact that the bequest is made to a voluntary, unincorporated association will in no way defeat the charity provided the general charitable intention of the testator is clear.[5] Once established that a trust for charitable purposes has been created, the courts will not allow it to fall for want or inability of trustees to take,[6] and in some circumstances where the bequest is void because contrary to the law, the objects will be carried out under the *cy pres* doctrine.[7] In such cases there is no reason to suppose that the discretion of any particular trustee has anything to do with the essence of the trust gift.[8]

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[3] Perry on Trusts, § 710; Parker v. May, 5 Cush. 336 (Mass., 1850); Everett v. Carr, 59 Me. 335 (1871); Coggesshall v. Pelton, 7 Johns. Ch. 294 (N. Y., 1823).

[4] Teele v. Bishop of Derry, 168 Mass. 341 (1897); Russell v. Allen, 107 U. S. 163 (1882), *per* the court: "Trusts for public charitable purposes are applied under circumstances under which private trusts would fail. Being for objects of permanent interest and benefit to the public, they may be perpetual in their direction, and instruments creating them should be construed so as to give them effect if possible and to carry out the general intention of the donor, when clearly manifested, even if the particular form and manner pointed out by him can not be followed. They may and indeed must be for the benefit of an indefinite number of persons, for if all the beneficiaries are personally designated, the trust lacks the essential element of indefiniteness which is one characteristic of a legal charity. If the founder describes the general nature of the charitable trust, he may leave the details of its administration to be settled by trustees under the supervision of a court of chancery."

[5] Attorney-General v. Oglander, 3 Bro. Ch. 166 (1790); Re Dudgen, 74 L. T. 613 (1896); Burrill v. Boardman, 43 N. Y. 254 (1871); Libby v. Tobbein, 163 Mo. 477 (1890); Chamber v. Higgins' Exec., 20 Ky. Law 1425 (1899); Christian Church v. First Church of Christ, 219 Ill. 503 (1906).

[6] Keith v. Scales, 124 N. C. 497 (1899); Estate of Winchester, 133 Cal. 271 (1901); St. Peter's Church v. Brown, 21 R. J. 367 (1899); Hesketh v. Murphy, 35 N. J. Eq. 23 (1882); Appeal of Eliot, 74 Conn. 586 (1902); Jones v. Watford, 62 N. J. Eq. 339 (1901); Leda v. Huble, 75 Iowa, 431 (1888); Bliss v. American Bible Society, 2 Allen 334 (Mass., 1861).

[7] Moggride v. Thackwell, 7 Ves. Jr. 75 (1862); Woman's Christian Asso. v. Kansas City, 147 Mo. 103 (1898).

[8] Hayter v. Trego, 5 Russ. 113 (1830); Denyer v. Druce, Tamlyn's 32 (1829); Walsh v. Gladstone, 1 Phil. Ch. 290 (1843); Brown v. Higgs, 8 Ves. Jr. 571 (1803); Cole v. Wade, 16 Ves. Jr. 29 (1807).

Where legacies are given in trust for purposes that are clearly charitable, but these purposes are joined with words that authorize the trustees to expend the fund for other purposes which are not charitable the whole gift falls.[9] But the courts make a distinction where a residue is given to charity and out of such residue certain bequests are made which are subsequently unenforceable. Such void bequests merely fall into the residue and the whole of the fund is applied to the charitable purpose.[10] Of course, if it is impossible to execute the particular charity for which provision is made, the devise falls altogether.[11]

In the present case, there was a devise for the upkeep of church buildings, payable out of the general fund given to the spread of Christian Science. It was contended that the first part of the trust was void and so the whole should be inoperative. But the repair of parishes has long been held a valid charitable object[12] and so the courts were confronted with the sole proposition whether the intention of the testatrix was to have the fund devoted for the promotion of her own religion in the Christian world or whether the benefit was to be confined to the members of the "Mother Church" in Boston. In the latter instance, the gift would necessarily have to fall owing to the prohibitive statute. But in reaching a contrary conclusion, the court seemed to have in mind the peculiar and almost supernatural disposition of the donor. Though the bequest on trust was undoubtedly to the Boston congregation, who were unable to act as trustees owing to the statute, yet the wording in the concluding phrase was of such a broad and liberal nature that the court had little difficulty in upholding it as a charity.

Just what influence the popularity and enthusiasm for this twentieth century religion, so prevalent among a respectable, yet thinking class of citizens, had upon the minds of those rendering the decision is a question more of psychological interest than of legal import. Suffice it to say that the case is valuable for the authorities cited and interesting as illustrating to what extent the courts of that jurisdiction will go in supporting a trust whenever the tenets and dogmas of any Christian belief are involved.[13]

W. A. W., 2nd.

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[9] Gibbs v. Ramsey, 2 Ves. & B. 295 (1813); Kendall v. Granger, 5 Beav. 300 (1842); Gill v. Attorney-General, 197 Mass. 232 (1908); Williams v. Kershaw, 5 Law J. (N. S.) Ch. 84 (1835); Minot v. Attorney-General, 176 Mass. 189 (1905).

[10] Dawson v. Smally, L. R. 18 Eq. 114 (1868); *In Re* Birkett, 9 Ch. Div. 576 (1878); Fisk v. Attorney-General, L. R. 4 Eq. 521 (1867); Hoare v. Osborne, L. R. 1 Eq. 583 (1866); Mayor of Lyons v. East India Co., 1 Moore P. C. 175 (1836); Dexter v. Harvard College, 176 Mass. 192 (1900); *In Re* Rogerson, L. R. 1 Ch. Div. 715 (1901).

[11] *In Re* White, 33 Ch. Div. 449 (1886).

[12] Attorney-General v. Bishop of Chester, 1 Browns C. C. 444 (1785); *In Re* Vaughan, L. R. 33 Ch. Div. 137 (1886).

[13] McAlister v. Burgess, 161 Mass. 269 (1894); Jackson v. Phillips, 14 Allen 539 (Mass. 1867), where it was said: "A charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of per-